BTA OIL PRODUCERS

IBLA 85-552 Decided April 11, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications N 41372 et al.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly reject a simultaneous oil and gas lease application filed on behalf of a partnership if the applicant has not complied with the provisions of 43 CFR 3112.2-3 by disclosing the identity of all partners on the application or on a sheet accompanying the application, a substantive requirement of the oil and gas leasing program.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for BTA Oil Producers.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

BTA Oil Producers (BTA) appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 2, 1985, which rejected its simultaneous oil and gas lease applications N 41372, N 41375, N 41380, N 41428, N 41442, N 41444, N 41445, N 41447, and N 41459.

BTA lease applications for nine parcels in the December 1984 simultaneous oil and gas lease drawing were selected and assigned first priority. Information reported on Part B of the application form (Form 3112-6a (April 1984)) identified the applicant as "BTA Oil Producers." In the space provided on the form to state "FULL NAME OF OTHER PARTIES IN INTEREST," "NONE" had been written. The form had been signed "Barry Beal - PARTNER" and dated "12/14/84." The filing period for the December 1984 drawing closed December 21, 1984. On January 29, 1985, BTA filed a copy of its "Corporate qualifications" and requested the document be accepted as part of the December 1984 application form. By letter dated February 8, 1985, BLM informed BTA the materials filed on the 29th of January could not be attached to the application form after the filing period had closed. In its April 2, 1985, decision, BLM rejected the applications because the application form did not disclose all parties-in-interest as required by 43 CFR 3112.2-3. BTA appealed the rejection decision. Pursuant to a written request from BTA, the appeal has been dismissed as to applications N 41372, N 41375, N 41380, and N 41459 by order dated August 30, 1985. Applications N 41428, N 41442, N 41444, N 41445, and N 41447 remain in issue.

In its statement of reasons, appellant argues BLM's decision to reject the applications was arbitrary and capricious because the stated violation was insubstantial with respect to determining qualifications, and strict enforcement does not serve a dominant purpose of the Mineral Leasing Act or simultaneous filing system. Appellant challenges BLM's rejection based on noncompliance with 43 CFR 3112.2-3 on the basis of Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), and similar cases. Appellant asserts that the court in Conway scrutinized BLM's strict enforcement of qualifications disclosure and held BLM must rationally exercise its discretionary authority to require additional information. Appellant argues that despite an attempt to establish a "per se" rule automatically voiding any application not in conformity with Department rules, "the Department clearly retained the discretion to accept or reject the application, for failure to furnish a complete list of individuals who are members of the partnership" (Statement of Reasons at 12). Appellant concludes it is not critical whether members are identified on the application or the pertinent information is submitted at a later date.

[1] The regulatory requirement upon which BLM's decision is based reads in part:

> Compliance with Subpart 3102 of this title is required. The applicant shall set forth on the lease application, or on a separate accompanying sheet, the names of all other parties who hold an interest (as defined in § 3000.0-5(k) of this title) in the application, or the lease, if issued.

43 CFR 3112.2-3.

In 1982, BLM abandoned its previous system of referring to qualifications numbers assigned to documents filed by corporations, partnerships, and other associations, and determined to rely upon a "certification" system coupled with selective audits. 47 FR 8544 (Feb. 26, 1982). When adopting the "certification" system, BLM stated, "In the future all lease applicants and assignees will be required to certify their compliance with statutory requirements on the lease or assignment application, subject to criminal sanctions of 18 U.S.C. 1001 regarding fraudulent statements." Id. (emphasis added).

On August 19, 1983, BLM announced the newly promulgated version of 43 CFR 3112.2-3, 48 FR 33648 (July 22, 1983), would be strictly enforced. That announcement provided:

> After August 22, 1983, applications for simultaneously offered parcels received from associations, including partnerships, must be accompanied by a complete list of individuals who are members thereof. This requirement is authorized under 43 CFR 3102.5. By this notice, the Bureau of Land Management formally interprets and exercises its right of demand for this information at the time application is made.

48 FR 37656 (Aug. 19, 1983). The notice plainly indicates that the rulemaking was an exercise of BLM's authority under 43 CFR 3102.5 to require an

applicant to submit "additional information to show compliance with the regulations of this group and the Act."

BLM stated the purpose of strict enforcement of the regulation at 43 CFR 3112.2-3 is "to preserve the integrity of the simultaneous oil and gas leasing program by ensuring against multiple filings on a single parcel as prohibited by amended § 3112.5-1." 48 FR at 37656. Disclosure of parties-in-interest also allows BLM to review applications against the acreage limitations set forth in 43 CFR 3101.2. Satellite 8211104, 89 IBLA 388, 395 (1985). Appellant is deemed to have knowledge of 43 CFR 3112.2-3 and the requirement that partnership applications must be accompanied by a complete list of members. Both were published in the Federal Register, and were, therefore, a matter of public record. 44 U.S.C. § 1507 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947); W.O.I.L. Associates, 85 IBLA 394 (1985).

Appellant asserts its failure to provide partner identification in the space provided for listing other parties-in-interest or on a separate attached sheet is not a substantive defect for which the application should be rejected. As noted above, appellant relies upon Conway v. Watt, supra, and subsequent judicial decisions based upon that decision. As a result of the court's holding in Conway, the tendency in challenges to the simultaneous filing program has been to focus on whether a BLM requirement serves a reasonable purpose related to the Mineral Leasing Act and whether it is enforced in a manner which will fulfill such purpose.

In KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985), the court rendering the Conway decision again reviewed an issue involving BLM administration of the simultaneous filing program. This latter case involved the predecessor to the regulation at issue here. Under the previous scheme, a partnership submitting a simultaneous filing application was required to affix a preassigned serial number corresponding to a BLM file containing documents verifying the partnership's qualifications to obtain an oil and gas lease, including a statement of the partners' identities. In order to better understand the court's decision in KVK in relationship to the issues of this appeal, we quote from it at length:

> The BLM rejected KVK's application because it violated both the requirement that a showing of partnership qualifications accompany the application absent a reference in the application to the serial number, and the requirement that all partners sign the application absent a statement authorizing one partner to sign for the partnership.
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> KVK argues that because it had complied with all the disclosure requirements and was a qualified applicant, its violations were mere trivial technicalities. It contends that the regulations invoked by the BLM did not materially advance Congressional intent, and that the BLM's rejection of a qualified applicant for noncompliance was therefore arbitrary and capricious. In support of its argument, KVK relies on Conway v. Watt, 717 F.2d 512 (10th Cir. 1983).

> KVK's reading of Conway is too broad, and its reliance on that case is therefore misplaced. * * * Contrary to KVK's assertion in the present case, we did not hold that the agency may never adopt per se requirements. Read in light of its facts, Conway holds only that a BLM regulation may not be per se grounds for disqualification if it does not further a statutory purpose.
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> * * * Our task here is to determine whether, in contrast with Conway, the regulations at issue are reasonably related to legitimate agency activity within the scope of its authority.
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> * * * The BLM is required by statute to award leases only to qualified applicants. See 30 U.S.C. § 226(c) (1982). In order to carry out this statutory mandate, at the time KVK filed its application the BLM required a partnership to submit information demonstrating its qualifications. See 43 C.F.R. § 3102.2-4 (1981). Instead of attaching this information to each application, the regulations permitted a partnership to prefile its qualifications and then refer in its application to the serial number assigned to this information by the BLM. See 43 C.F.R. § 3102.2-1 (1981). The BLM contends that requiring the applicant to supply either its qualifications or the serial number with the drawing card facilitated a speedy and efficient determination of a drawee's qualifications. The BLM argues that it therefore did not abuse its discretion by disqualifying KVK because KVK had not complied with a requirement reasonably related to a legitimate goal. We agree.
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> * * * Unlike the date in Conway which we determined to be unessential, the requirement that the validity of the application be facially established is a substantive condition necessary to satisfy legitimate government interests. We conclude that this requirement is reasonably related to a matter within the scope of the agency's authority, and that the BLM acted reasonably in rejecting KVK for its failure to comply. [Footnote omitted.]

Id. at 816-17. Thus, BTA's assertion that the failure to disclose the members of the partnership is inconsequential must be rejected. The requirement that all partners be identified on the application is substantive and is reasonably related to a legitimate agency activity. Although the identities of the members of a partnership receiving priority could be determined upon inquiry after a drawing, this is not a substitute for disclosure prior to the drawing. In light of the large number of partnerships and associations that participate in the simultaneous drawings, advance disclosure of the identity of the partners or members is required to guard against illegal multiple filings on the same parcel by an individual who is participating in and thus holding an interest in more than one partnership or association. The identity of the parties who hold an interest in all associations and partnerships participating in the drawing must be known, not just the identity of those who hold an interest in the successful drawee. See The Turner Association, 85 IBLA 374, 377 (1985).

Departmental regulation, 43 CFR 3112.5-1(a), requires that "[a]ny application determined by adjudication as not meeting the requirements of Subpart 3112 of this title shall be rejected." The Board has held that a failure to disclose the members of an association in compliance with the regulations requires rejection of a simultaneous oil and gas lease application. E.g., W.O.I.L. Associates, supra; The Turner Association, supra. The policy and enforcement notice published at 48 FR 37656 defined partnerships to be among those entities which must identify their members. The policy of rejecting applications when the parties-in-interest are not disclosed is properly applied to partnerships. Thus, BLM properly rejected BTA's application for failure to disclose the identity of its partners prior to the closing date for filing simultaneous applications. On December 21, 1984, the BTA application was incomplete and BTA was not a qualified applicant.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Bruce R. Harris
Administrative Judge